

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Kenneth Ray Mitchell,	)	C/A No. 3:11-609-CMC-PJG
	)	
Plaintiff,	)	
	)	
v.	)	<b>REPORT AND RECOMMENDATION</b>
	)	
Liberty Tax Services; Marilyn Kirkland,	)	
	)	
Defendants.	)	
_____	)	

This civil action is currently before the assigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC for a Report and Recommendation concerning the service of process for the named defendants. The plaintiff, Kenneth Ray Mitchell, who is self-represented, filed his Complaint on March 14, 2011. (ECF No. 1.) As the plaintiff was granted leave to proceed *in forma pauperis* (ECF No. 9), the court issued an order on May 2, 2011 authorizing issuance of service of process by the Clerk of Court and directing the United States Marshals Service to serve the Summons and Complaint on the defendants. (ECF No. 13); see Fed. R. Civ. P. 4(c)(3); 29 U.S.C. § 1915(d). The court's order stated that "[i]f the information provided by Plaintiff . . . is not sufficient for the Marshal to effect service of process, . . . the Marshal should so note in the 'Remarks' section at the bottom of the Form USM-285." (ECF No. 13 at 1.) The plaintiff was also specifically advised that "[plaintiff] **must** provide, and is responsible for, information sufficient to identify Defendants," and that "[t]he United States Marshal cannot serve an improperly identified defendant, and unserved defendants may be dismissed as parties to this case." (Id. at 2.) Review of the docket discloses that the Summons for Defendant Liberty Tax

Services was returned unexecuted on August 5, 2011, and the summons for Defendant Kirkland was returned unexecuted on August 15, 2011. (ECF Nos. 18 & 19.)

The court issued an order to show cause on September 2, 2011. (ECF No. 21.) In its order, the court, after review of the returned summonses, concluded that the investigative efforts of the United States Marshals Service were reasonable. See Greene v. Holloway, No. 99-7380, 2000 WL 296314, at \*1 (4th Cir. 2000) (citing with approval Graham v. Satkoski, 51 F.3d 710 (7th Cir. 1995)). The order granted the plaintiff fourteen days to provide the court with additional information that would assist in effecting service on the defendants and specifically warned the plaintiff that if he failed to respond, this action would be recommended for dismissal pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Notwithstanding the specific warning and instructions set forth in the court's order to show cause, the plaintiff failed to respond.

#### RECOMMENDATION

Accordingly, the court recommends that this matter be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).



Paige J. Gossett  
UNITED STATES MAGISTRATE JUDGE

September 21, 2011  
Columbia, South Carolina

*The parties' attention is directed to the important notice on the next page.*

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).